

STATE OF MICHIGAN
IN THE 36TH DISTRICT COURT

CITY OF DETROIT, a municipal
Corporation,

Plaintiff,

Hon. Beverly Hayes-Sipes
Case No. 08337680

V

AMBASSADOR BRIDGE CO., a/k/a,
DETROIT INTERNATIONAL BRIDGE CO.,
A Michigan Corporation,

Defendant.

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ORDER

PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION

At a session of this Court held in
The Thirty-Sixth District Courthouse,
City of Detroit, County of Wayne, Michigan

On 10-2-09

Present: Honorable ~~JUDGE BEVERLY HAYES-SIPES~~
36th Judicial District Court Judge

This matter, having come before the Court on Plaintiff
Motion for Summary Disposition, based upon the parties

pleadings and oral arguments, the Court being fully advised in the premises:

IT IS ORDERED AND ADJUDGED THAT:

- 1) Plaintiff's Motion for Summary Disposition is **GRANTED**,
- 2) Plaintiff has the right of possession of the property at issue,
- 3) Defendant has ninety (90) days to remove its fence, all construction materials and personnel from the said property, and
- 4) Plaintiff may seek a Writ of Restitution pursuant to MCR 2.401.

STATEMENT OF FACTS

City of Detroit, Plaintiff

The Plaintiff, City of Detroit, brings this action under MCR 4.201, MCL 600.5701, Summary Proceedings to Recover Possession of Premises.

The Plaintiff seeks possession of the land described as a part of the Riverside Park located near the southwest side of the City of Detroit, and presently in the possession and control of the Defendant, Ambassador Bridge Company a/k/a Detroit International Bridge Company. The Plaintiff states that Riverside Park is owned by the City of Detroit, under the

auspices of the Recreation Department, formerly known as the Parks and Recreation Department of the City of Detroit.

The Plaintiff initially alleged that the Defendant was given authority to occupy the property by virtue of a Resolution of the Detroit City Council that had expired. Therefore, the Plaintiff argued that the Defendant's right to possession and control of the subject parcel of land by virtue of the Resolution was no longer valid. The Plaintiff subsequently acknowledged that the legal description of the land in the Resolution did not involve the subject property, only the public streets surrounding and/or near the subject property.

The Plaintiff now posits that the Defendant never had the right to possession and/or control of the subject property and to erect a fence with armed security because the Detroit City Council never approved any "tenancy, lease, easement, license or any other legally binding permission."

The Plaintiff argues that permitting the Defendant to maintain a fence on the City's property without legal authority is in effect a "taking," an attempt by the Defendants to condemn property of the City of Detroit. Therefore, the City of Detroit seeks the remedy of the Summary Proceedings Act to evict the Defendant from the subject property.

Detroit International Bridge Company, Defendant

The Defendant states that subsequent to the events of September 11, 2001, and because of its function as the North America's busiest border crossing between the United States and Canada, the Ambassador Bridge was designated as a "critical infrastructure" by the Department of Homeland Security, the State Police of Michigan and the City of Detroit.

Following the Critical Infrastructures Protection Act of 2001, the Defendant states it sought and received permission from the City of Detroit to construct and maintain a fence, sufficient to enable the Defendant to establish and maintain a 150' buffer zone on the west side of the Ambassador Bridge.

The Defendant states that it received specific permission from the then Mayor of the City of Detroit, Dennis Archer to enter the parcel of land at issue, within Riverside Park, fence in a 150' buffer zone, and provide armed security to protect the Ambassador Bridge. The Plaintiff does not dispute that former Mayor Archer may have given permission to the Defendant to enter onto the subject property shortly after the events of 911, but the Plaintiff argues, only the Detroit City Council can legally bind the City of Detroit as to the disposition of property.

The Defendant argues the significance and importance of the buffer zone. It states that without the 150' buffer zone on the subject property, fenced with private armed security personnel, it cannot implement the security measures necessary to fulfill its duty to facilitate the free flow of traffic over the Ambassador Bridge and to protect the integrity of the bridge and by extension, the City of Detroit and the United States.

Accordingly, the Defendant asks this Court to deny Plaintiff's Motion for Summary Disposition.

Conclusions of Law

The Plaintiff seeks the protection of/and remedies applicable to The Summary Proceedings Act, the Landlord Tenant Act. The LTRA serves to regulate relationships between landlords and tenants relative to rental agreements and the payment, repayment, and use of security deposits. The act is intended to protect tenants, especially from the situation where a landlord "surreptitiously usurp[s] substantial sums held to secure the performance of conditions under the lease." Oak Park Village v Gorton, 128 Mich App 671, 680; 341 NW2d 788 (1983).

The LTRA provides a procedure in district and municipal courts for the recovery of possession of realty in an expeditious manner. Pursuant to MCL 600.5714; MSA 27A.5714

(1), a person entitled to certain premises may seek to recover possession through summary proceedings in the following circumstances:

- (a) When a person holds over premises, after failing or refusing to pay rent
- (b) When a person holds over premises for 7 days following service of a written demand for possession for termination of the lease pursuant to a clause in the lease providing for termination because a tenant, a member of the tenant's household, or other person under the tenant's control has unlawfully manufactured, delivered, possessed with intent to deliver, or possessed a controlled substance on the leased premises
- (c) When a person holds over premises in 1 or more of the following circumstances:
 - (i) After termination of the lease, pursuant to a power to terminate provided in the lease or implied by law.
 - (ii) After the term for which the premises are demised to the person under whom he or she holds.
 - (iii) After the termination of the person's estate by a notice to quit as provided by . . .
- (d) When the person in possession willfully or negligently causes a serious and continuing health hazard to exist on the premises, or causes extensive and continuing physical injury to the premises
- (e) When a person takes possession of premises by means of a forcible entry, holds possession of premises by force after a peaceable entry, or comes into possession of premises by trespass without color of title or other possessory interest.
- (f) When a person continues in possession of premises sold by virtue of a mortgage or execution, after the time

limited by law for redemption of the premises.

(g) When a person continues in possession of premises sold and conveyed by a personal representative under license from the probate court or under authority in the will...

Both parties acknowledge that the Detroit City Council has not authorized a lease permitting the Defendant to occupy and/or construct a fence on the subject property.

"A lease is a conveyance by the owner of an estate of a portion of the interest therein to another for a term less than his own for a valuable consideration." De Bruyn Produce Co v Romero, 202 Mich. App. 92, 98; 508 N.W.2d 150 (1993). It grants the lessee the right to possession and exclusive use or occupation of the property leased for all purposes not prohibited by its terms. *Id.* In order for an agreement to constitute a valid lease, "it must contain the names of the parties, an adequate description of the leased premises, the length of the lease term, and the amount of the rent." *Id.*, 98-99, quoting Macke Laundry Service Co v Overgaard, 173 Mich. App. 250, 253; 433 N.W.2d 813 (1988).

In contrast, a license consists of "permission to do some act or series of acts on the land of the licensor without having any permanent interest in it." Kitchen v Kitchen, 465 Mich. 654, 658; 641 N.W.2d 245 (2002). **While a tenant has exclusive legal possession and control of the premises against the owner for the term of the leasehold, a licensee "only has a right to use of the premises he occupies, subject to the proprietor's retention of control and right of access."** Ann Arbor Tenants Union v Ann Arbor YMCA, 229 Mich. App. 431, 443; 581 N.W.2d 794 (1998).

(emphasis added) United Coin Meter Co v Gibson, 109 Mich. App.

652, 655-656; 311 NW2d 442 (1981), *lv den* 414 Mich 898 (1982). A license gives permission to do an act or series of acts on the property without any permanent interest in the land. Gibson, *supra* at 655.

The Plaintiff argues that pursuant to Section 4-112 of the Charter of the City of Detroit, "the city may not sell or in any way dispose of any property without the approval by resolution of the city council." An ordinary translation of the phrase "dispose of" is to transfer something to the ownership of somebody else, by sale or gift." Where a lease transfers or gives exclusive possession and control of property, a license is simply permission to do some act on the property while the owner retains control and access.

Accordingly, while the Court finds that a landlord tenant relationship does not exist between the Plaintiff and the Defendant, the Court does find that the Defendant entered the subject property pursuant to permission granted by the Mayor of the City of Detroit, Dennis Archer for a specific purpose. This permission created a mere license, retaining the City's right of control and right of access to the subject property. The erection of the fence on the subject property interferes with the Plaintiff's rights of control and access.

The Plaintiff demanded the Defendant to vacate the property and remove the fence. Upon the refusal of the Defendant to comply with the demand of the Plaintiff, the Plaintiff has the right to seek the protection and remedies pursuant to MCL 600.5714, specifically:

- (d) When a person takes possession of premises by means of a forcible entry, ***holds possession of premises by force after a peaceable entry***, or comes into possession of premises by trespass without color of title or other possessory interest. (emphasis added)

The Plaintiff, City of Detroit brings its Motion for Summary Disposition pursuant to MCR. 2.116 (C)(10). Under MCR 2.116(C)(10), summary disposition is appropriate where "there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." West v General Motors Corp, 469 Mich. 177, 183; 665 N.W.2d 468 (2003) A question of material fact exists "when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.*

It has been established and acknowledged by both parties that the City of Detroit is the owner of the subject property and surrounding property identified as Riverside Park.

Notwithstanding the permission given to the Defendant to enter the subject property by then Mayor Archer for the purpose

of establishing a buffer zone, this Court finds the Defendant is a licensee without any legal rights to the property. The Plaintiff has the right to withdraw its permission and require the Defendant to remove the fence and vacate the property.

Both parties acknowledge the significant issue of security for both the Ambassador Bridge and the City of Detroit resulting from the critical function of the Bridge and the flow of traffic at this international entry point for the United States. This matter can be addressed by both parties through the proper authority of the City of Detroit, State of Michigan and Homeland Security of the United States.

Since the Defendant has failed to establish a material factual dispute, this Court finds for the Plaintiff and **GRANTS** it Motion for Summary Disposition. The Defendant must vacate the property within ninety (90) days from the entry of this Order. The Plaintiff has the right to seek a Writ of Restitution according to the provisions of MCR 4.201.

This judgment resolves the last pending claim and closes the case.

Date: 10/02/09

City of Detroit v Ambassador Bridge Co
Case # 08-337680
Hon. Beverly Hayes-Sipes

JUDGE BEVERLY HAYES - SIPES

DISTRICT COURT JUDGE

A TRUE COPY

CLERK

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